

1
2 **IN THE UNITED STATES DISTRICT COURT FOR THE**
3 **WESTERN DISTRICT OF MISSOURI**
4 **WESTERN DIVISION**

5 **UNITED STATES OF AMERICA,**) Case No. 16-00110-01-CR-W-DGK
6)
7 **Plaintiff,**) Kansas City, Missouri
8) February 8, 2017
9 **v.**)
10 **JAMES E. EVERETT, JR.,**)
11)
12 **Defendant.**)
13)
14)

15 **TRANSCRIPT OF HEARING ON SUPPLEMENTAL MOTION TO SUPPRESS**
16 **BEFORE THE HONORABLE ROBERT E. LARSEN**
17 **UNITED STATES MAGISTRATE JUDGE**

18 APPEARANCES:

19 For the Plaintiff: Mr. Jeffrey Q. McCarther
20 Ms. Courtney Pratten
21 Assistant United States Attorney
22 400 E. Ninth St., Ste. 5510
23 Kansas City, MO 64106
24 (816) 426-3122

25 For the Defendant: Mr. W. Marc Ermine
26 Federal Public Defender's Off.
27 818 Grand Blvd., Ste. 300
28 Kansas City, MO 64106
29 (816) 471-8282

30 Court Audio Operator: Ms. Christy Anderson

31 Transcribed by: Rapid Transcript
32 Lissa C. Whittaker
33 1001 West 65th Street
34 Kansas City, MO 64113
35 (816) 914-3613

36 Proceedings recorded by electronic sound recording, transcript
37 produced by transcription service.

(Court in Session at 9:36 a.m.)

THE COURT: I have a follow-up on a suppression hearing we conducted recently. This is the case of *United States of America vs. James E. Everett, Jr.* The number of the case is 16-110-01-CR-W-DGK. Let me have the AUSA's appearance, please.

MR. McCARTHER: Jeff McCarter on behalf of the United States. I'm joined at counsel table by Special Assistant Courtney Pratten who will be second chairing me at trial. Also seated at counsel table is Special Agent Travis Vas who is the case agent on this case, Your Honor.

THE COURT: Okay. Thank you. And counsel for Mr. Everett.

MR. ERMINE: Marc Ermine on behalf of Mr. Everett.

THE COURT: And we have Mr. Bush here along with Mr. Everett.

MR. ERMINE: Yes, sir.

THE COURT: We've got a Supplemental Motion to Suppress that was filed by defense counsel. And as I read that, it raised a new legal issue, or potentially two new legal issues in connection with the issue of whether or not the information -- whether the evidence should be suppressed here. The first issue deals with the Fifth Amendment preclusion and whether or not the statement that the defendant made was coerced and should, therefore, the derivative evidence be suppressed. And then the second issue was whether or not the Government is arguing an

1 inevitable discovery theory here based on the representations
2 made at the first hearing as to an inventory search made of the
3 car. So, those are at least what I think we're here to cover.
4 Is that accurate or not?

5 MR. ERMINE: Yes, sir. I think the simple way to put it
6 is we're moving to suppress not only the statement, but also all
7 the evidence to include the firearm that was discovered within
8 the car --

9 THE COURT: Right.

10 MR. ERMINE: -- and the heroin that was reportedly taken
11 from Mr. Everett's pockets.

12 THE COURT: And the legal argument is not *Miranda* -- I
13 mean, we're not waiving *Miranda*, but it's a coercive argument
14 that the actions of the law enforcement people coerced him into
15 making that statement, right?

16 MR. ERMINE: That's correct, Your Honor.

17 THE COURT: And so -- and then the second piece is if
18 they are raising the other issue on inevitable discovery -- well,
19 let's get that on the table, too.

20 MR. ERMINE: Yes, sir.

21 THE COURT: Okay. All right. I would want to point out
22 to the parties that as we take evidence in here, it would be
23 helpful if we would make it clear whether or not in each instance
24 on direct examination or cross-examination, whether or not the
25 witness is talking about as a percipient witness to things he or

1 she saw, observed, tasted, felt, et cetera, or whether he or she
2 is reporting something that someone else said. As we all, I
3 think, know under the Federal Rules of Evidence, hearsay may be
4 admissible here, but let's make it clear when we have hearsay
5 coming in and when we don't on both sides. Okay. All right.
6 So, are you ready to proceed?

7 MR. McCARTHER: Yes, Your Honor.

8 THE COURT: Okay. The United States would first call
9 Special Agent Travis Vas to the stand.

10 THE COURT: Okay. Agent, just come on up here and I'll
11 place you under oath. Good morning. Raise your right hand,
12 please.

13 TRAVIS VAS, GOVERNMENT'S WITNESS, SWORN

14 THE COURT: Take the stand over here on your left,
15 Agent. And when you get up there, it sometimes makes a noise to
16 adjust for weight, but don't get concerned about it.

17 DIRECT EXAMINATION

18 BY MR. McCARTHER:

19 Q. Could you please state your name for the record, sir?

20 A. Travis Stephen Vas.

21 Q. How do you spell your last name?

22 A. It's V as in Victor, A as in apple, S as in Sam.

23 Q. What is your occupation, sir?

24 A. I'm a special agent with the Federal Protective Service.

25 Q. And what is your total length of service in law enforcement?

1 A. I have about eight years, sir.

2 Q. And how long have you been employed by the Department of
3 Homeland Security?

4 A. About eight years, sir.

5 Q. So, as part of the, I believe you said FPS, what are your
6 duties and responsibilities in that role?

7 A. Our mission is to safeguard federal tenants, people that
8 visit federal buildings and then federal property, safeguarding
9 that as well.

10 Q. What is your current assignment area?

11 A. Right now I'm in St. Louis, Missouri, sir.

12 Q. What was your assignment area on the date of March 10, 2016?

13 A. Kansas City, Missouri.

14 Q. And how long had you been assigned to the Kansas City,
15 Missouri area?

16 A. About three years, sir.

17 Q. What type of crimes in your role as a special agent do you
18 investigate?

19 A. We deal with threats, assaults, unauthorized weapons, things
20 of that nature, sir.

21 Q. Are you the case agent on this case, *The United States vs.*
22 *James Everett, Jr.*?

23 A. I am.

24 Q. As a case agent what are your responsibilities?

25 A. Basically to take all the evidence, all the supplemental

1 reports, everything like that and essentially summarize that and
2 bring it to the AUSA for review.

3 Q. Do you recall being the affiant on a complaint filed against
4 the defendant on March 11, 2016?

5 A. I do.

6 Q. Do you recall drafting that affidavit that was filed in
7 conjunction to that complaint?

8 A. I do.

9 Q. I'm going to show you what's been already marked and admitted
10 as Defense Exhibit #3. Can you identify that document?

11 A. I can.

12 Q. What is it?

13 A. It's the affidavit in support of a criminal complaint.

14 Q. This was the one that would have been filed on March 11,
15 2016?

16 A. That is correct.

17 Q. I want to take you to Paragraph 5 of that document. And I'm
18 going to read it and I want you to make sure that I read this
19 correctly. Paragraph 5 reads, "During a search incident to the
20 arrest, Everett was asked if he had any weapons or contraband in
21 his possession. Everett stated he had a weapon in his vehicle
22 which was unlocked with the driver's door open on 12th Street."

23 Did I read that correctly?

24 A. You did, sir.

25 Q. I now want to show you what's been marked and admitted as

1 Defense Exhibit #1. Can you identify that document?

2 A. I can.

3 Q. What is that document?

4 A. That's my Report of Investigation, sir.

5 Q. I want to take you to page 3 of that document. First full
6 paragraph on page 3, third line down that begins with, "Of Carmex
7 lip balm . . ." And I want you to read along with me to make
8 sure I get this right. "FPS Officer Yadon asked Everett if he
9 drove to FPS Officer Yadon's location and if Everett had any
10 weapons on his person. Everett responded 'Yes' and further
11 stated, 'I have a gun in the car.'" Did I read that accurately?

12 A. You did.

13 Q. On March 10, 2016, did you report to the Richard Bolling
14 Federal Building on a reported disturbance?

15 A. I did.

16 Q. When you reported was the defendant still present at the
17 scene at that time?

18 A. He was.

19 Q. And what actions did you take after you arrived on the scene?

20 A. At that point the defendant was already in custody, prone in
21 a handcuff position. One of the first things I did is I noticed
22 one of the uniform officer's hands was bleeding. So, I went to
23 him, asked him what was going on, and I took him to the Richard
24 Bolling Federal Building nurse's station and got him medical
25 treatment.

1 Q. After he was given medical assistance, did you go back down
2 to the scene of the incident?

3 A. I did.

4 Q. Was the defendant still present?

5 A. I do not believe he was. There was only just a lot of law
6 enforcement around. I do not believe there was any ambulance or
7 anything like that around.

8 Q. Would it be fair to say that you have no personal knowledge
9 of any of the events that took place prior to your arrival of at
10 the Richard Bolling Federal Building?

11 A. That would be fair to say. I personally was not a witness to
12 anything between our law enforcement officers and the defendant.

13 Q. So, how did you figure out what had happened?

14 A. Through the supplemental reports and speaking to law
15 enforcement officers on the ground.

16 Q. Do you have any direct knowledge of any statements that the
17 defendant made at the scene?

18 A. I was not present during any statements that the defendant
19 may have made.

20 Q. So, these exhibits, Exhibits #1 and #3 that I've presented to
21 you, would it be fair to categorize these are summary documents?

22 A. That would be fair to say, yes, sir.

23 Q. Do you have any direct knowledge of the details contained in
24 these summary documents of which you were not -- during instances
25 where you were not present at the scene?

1 A. I have no knowledge of what the defendant said versus --

2 Q. So, I want --

3 A. Just because of the fact I was not there.

4 Q. So, I want to reference the statements that I read to you
5 from Exhibits #1 and Exhibits #3. Why is there a reference in
6 these documents that defendant was asked whether he had any
7 weapons on him?

8 A. At the time of -- when I came back down, sir, and started
9 taking the information, when I had heard that he had made that
10 statement, it was just such a spontaneous statement and the fact
11 that we're always taught in training to ask if a person has
12 weapons or contraband on their person, I had just assumed that
13 that was asked of the defendant prior to him making that
14 statement.

15 Q. So, it would be fair to say that those statements in Exhibits
16 #1 and #3 were based on your belief of what happened at the time
17 rather than your personal knowledge. Is that fair to say?

18 A. Yes, sir. I truly believe that's what he said.

19 Q. I have a different question as it relates to the scene. Do
20 you have any knowledge of what happened to Mr. Everett's keys
21 after he was taken into custody?

22 A. During the investigation we did look at video that was taken
23 from the Richard Bolling Federal Building. There's perimeter
24 cameras on the rooftops. And there was a time where Mr. Everett
25 was taken to the ground by our officers where it looked like

1 something that matches the description of keys was almost I would
2 say tossed or flung from his hands as he was coming down to the
3 ground.

4 Q. But you have no knowledge of where those keys were taken
5 after they had been flung to the ground?

6 A. I do not. I was not around, sir.

7 MR. McCARTHER: I have no further questions at this
8 time, Your Honor.

9 THE COURT: Cross.

10 CROSS-EXAMINATION

11 BY MR. ERMINE:

12 Q. Good morning.

13 A. Hey, good morning.

14 Q. You testify that you're the case agent in this case, right?

15 A. Yes, sir.

16 Q. So, you are familiar with all the supplemental reports that
17 were written in this case?

18 A. I am, sir.

19 Q. Are you familiar with a supplemental report that was written
20 by FPS Inspector Wright?

21 A. I am, sir.

22 Q. Okay. Are you also familiar with the supplemental report
23 that was written by Inspector Patterson?

24 A. I am.

25 Q. I'm going to show you what I have previously marked as

1 Defense Exhibits #4 and #5.

2 A. Thank you.

3 Q. After taking a look at those, can you tell the Court what
4 Defense Exhibit #4 is?

5 A. It appears this is a supplemental report written by Inspector
6 David Wright.

7 Q. And is that the report that I just asked you about that
8 you're familiar with?

9 A. That is correct, sir.

10 MR. ERMINE: Okay. I'd move for admission of Defense
11 Exhibit #4.

12 THE COURT: Any objection?

13 MR. McCARTHER: Your Honor, my understanding was this
14 was already marked and admitted though it may have been missing
15 some pages from the prior suppression hearing.

16 THE COURT: Is this a complete report?

17 MR. ERMINE: That's correct, Your Honor. And I was
18 going to mention that after I did the next one. I can tell you
19 now I agree with the Government. The reason why I'm introducing
20 these two reports now is there were some pages missing from the
21 previous report.

22 THE COURT: I welcome that.

23 MR. ERMINE: Yes.

24 THE COURT: So, I'm not -- I just want to make sure this
25 is a complete report.

1 MR. ERMINE: This is the complete report. And --

2 THE COURT: Other than -- let me just see if -- is there
3 any other objection you've got, Mr. McCarter?

4 MR. McCARTHER: My previous objection had been to
5 hearsay. And to the extent that's relevant now, I would again
6 reiterate that objection.

7 THE COURT: Okay. Well, I think the rules allow hearsay
8 in these types of proceedings. So, that objection is overruled.
9 #4 is in. Move on to #5 then.

10 BY MR. ERMINE:

11 Q. And, Agent Vas, taking a look at Defense Exhibit #5, what
12 does this appear to be?

13 A. It also looks like a supplemental report, sir. And this one
14 looks like it's authored by Wesley Patterson at the end.

15 Q. Okay. And are you familiar with this report in your role as
16 case agent?

17 A. Yes, sir.

18 Q. Okay. This appears to be the complete report by Officer
19 Patterson, correct?

20 A. Yes.

21 MR. ERMINE: Okay. Move for admission of Defense
22 Exhibit #5.

23 THE COURT: Objection?

24 MR. McCARTHER: Hearsay, Your Honor.

25 THE COURT: Okay. Overruled. It's in.

1 MR. ERMINE: And again, just so you're aware, Your
2 Honor, these exhibits will substitute for the previously admitted
3 exhibits at the prior hearing. These are more accurate versions,
4 so we'll just ask the Court --

5 THE COURT: Well, they're all in evidence.

6 MR. ERMINE: Yes, sir.

7 THE COURT: They're all in evidence. Which ones were
8 these full copies of? Do you know off-hand?

9 MR. ERMINE: If I could have just one second.

10 THE COURT: No, you don't need to do that now. Just at
11 some point. I mean, do you know, Jeff?

12 MR. McCARTHER: I think I can clarify.

13 THE COURT: Sure.

14 MR. McCARTHER: I believe the prior admitted Exhibit #4
15 was one page from Officer Wright's report and a page from Officer
16 Patterson's report. And so Exhibit #4 just admitted is the full
17 Officer Wright's report, whereas Exhibit #5 is the full Officer
18 Patterson's report.

19 MR. ERMINE: Right.

20 THE COURT: Do you know which ones they were
21 representing out of the earlier exhibits? I can figure this out,
22 so.

23 MR. McCARTHER: I believe Exhibit #4 had been offered as
24 Officer Wright's full report, even though it was one page from
25 Officer Wright's report and one page from Officer Patterson's

1 report.

2 THE COURT: Okay. All right. Thank you.

3 MR. ERMINE: Thank you.

4 MR. McCARTHER: Thanks.

5 BY MR. ERMINE:

6 Q. Now, Agent Vas, you testified that -- well, let me back up.

7 To become an FPS officer you undergo training, correct?

8 A. Yes.

9 Q. And part of that training is, I think as you mentioned, has
10 to do with how to make arrests, correct?

11 A. Yes.

12 Q. So, part of that training then involves being trained to ask
13 particular questions when someone is taken into custody, correct?

14 A. Yes.

15 Q. And you testified that as part of your training as an FPS
16 officer to ask these particular questions, those questions being
17 whether the person who is being detained has any weapons on their
18 person, correct?

19 A. Yes.

20 Q. And so it was based on your training and your experience then
21 that you expected that those questions would have been asked of
22 Mr. Everett here, correct?

23 A. Yes.

24 MR. ERMINE: Okay. Might I have one moment, Your Honor?

25 THE COURT: Yeah. You bet.

1 BY MR. ERMINE:

2 Q. A few more questions, Agent Vas. When you were including
3 your summary, you actually talked to the officers as well as
4 reviewing their supplemental reports, didn't you?

5 A. Yes, sir, on the same day.

6 Q. Okay. And isn't it true that there were more officers there
7 than just Wright and Patterson and Yadon, correct?

8 A. Yes, sir.

9 Q. I think it ended up being there were about six people who
10 ultimately arrested Mr. Everett, correct?

11 A. I don't know the final number off the top of my head, sir, --

12 Q. Okay.

13 A. -- but it's more than those, yes.

14 Q. Okay. Did you talk to the other people besides Yadon, Wright
15 and Patterson?

16 A. I cannot recall if I did, sir.

17 Q. Okay. Would you agree with me that the other people that
18 were there, the other FPS officers that were there, they didn't
19 write reports, did they?

20 A. The ones that did not engage with the defendant with going
21 hands on, no, I don't believe I talked to any of them, sir.

22 Q. Okay.

23 A. I believe they arrived after the fact.

24 Q. Do you know who Inspector C. Schwarz is?

25 A. Yes, I do.

1 Q. Okay. Was that somebody who was there that day?

2 A. Yes, sir.

3 Q. He's an FPS officer?

4 A. Yes.

5 Q. And looking at --

6 THE COURT: Is that Defendant's #5?

7 MR. ERMINE: Yes, sir. So, looking at Defense Exhibit
8 #5.

9 THE COURT: Marc, is your -- Marc, would you move the
10 mic over so we're picking you up?

11 BY MR. ERMINE:

12 Q. So, looking here at Defense Exhibit #5 and this report that
13 you've previously talked about, this is written by Officer
14 Patterson, you can see here -- would you agree with me that he
15 says that Inspector Schwarz was one of the folks who responded
16 immediately to Mr. Everett?

17 A. Yes, sir.

18 Q. Okay. You haven't seen any reports from Inspector Schwarz
19 though?

20 A. Not to my recollection, sir, at all.

21 Q. Do you recall speaking to Inspector Schwarz before you wrote
22 your reports?

23 A. I did, sir.

24 Q. Okay. And then there were also a couple of other inspectors
25 who showed up, or I should say area commanders. There was a

1 Burnetta?

2 A. Yes, sir.

3 Q. Did you talk to Area Commander Burnetta before generating
4 your summaries of the reports?

5 A. I don't believe I did, sir.

6 Q. Okay. Were you at the scene when the vehicle in this case
7 was searched?

8 A. I don't believe I was, sir.

9 Q. Okay.

10 A. I believe that was all after the fact.

11 Q. Okay. So, you don't have any knowledge then of how the
12 vehicle came to be searched or any personal knowledge of how the
13 vehicle came to be searched?

14 A. Any direct knowledge, no, sir. I wasn't involved with
15 calling a tow truck or anything like that.

16 MR. ERMINE: Okay. All right. One more moment, Your
17 Honor.

18 THE COURT: You bet.

19 (Off Record Talking)

20 BY MR. ERMINE:

21 Q. Do you remember the substance of your conversation with
22 Inspector Schwarz?

23 A. Vaguely, yes, sir.

24 Q. Okay. In that conversation did you learn that Inspector
25 Schwarz, was he close by Mr. Everett when Mr. Everett was on the

1 ground?

2 MR. McCARTHER: Objection, hearsay.

3 THE COURT: Overruled. What was the question? I --

4 MR. ERMINE: The question is when he spoke to Inspector
5 Schwarz, did Inspector Schwarz tell him that basically he was
6 close by -- "he" being Inspector Schwarz was close by Mr. Everett
7 when Mr. Everett was taken to the ground.

8 THE COURT: You may answer.

9 THE WITNESS: A hundred percent I couldn't tell you what
10 he said, sir. I just know you said he had been in an altercation
11 with the defendant. So, as far as how close he was or anything
12 like that, I don't know directly how close he was --

13 MR. ERMINE: Okay.

14 THE WITNESS: -- or anything like that.

15 BY MR. ERMINE:

16 Q. So, you're saying then that you don't recall really any of
17 the specifics of your conversation with Inspector Schwarz?

18 A. It's mainly just getting him medical treatment at that time,
19 sir. I believe one of the things we talked about is when I
20 arrived on scene before I took him to medical treatment, hey,
21 what's going on, you know, what's the situation, since I had no
22 really idea what was going on. And one of those things I believe
23 he told me was that the defendant had drove here and demanded to
24 speak to a federal judge. And far as specifically how everything
25 went down, I can't recall specifically what he said, sir, I'm

1 sorry.

2 MR. ERMINE: Okay. All right. Nothing further, Your
3 Honor.

4 THE COURT: Redirect?

5 MR. McCARTHER: No redirect, Your Honor.

6 EXAMINATION BY THE COURT:

7 Q. Okay. I've got a couple of follow-up questions to ask you.
8 And some of this you may not know the answer to, Agent, and
9 that's fine. If you don't, just tell me you don't know the
10 answer to it.

11 A. Yes, Your Honor.

12 Q. Let's go back to the examination about the criminal
13 complaint, which was marked as Defendant's #3 and your affidavit
14 there. And counsel referred to Paragraph Number 5 in that
15 affidavit which said that "Everett was asked if he had any
16 weapons or contraband in his possession. Everett stated he had a
17 weapon in his vehicle which was unlocked with the driver's door
18 open at 12th Street." Where did you -- from whom did you get
19 that information?

20 A. Sir, honestly, when I wrote that I believe that that question
21 had been asked since it was such a spontaneous statement to have
22 been made. And with the training that goes with, and all our law
23 enforcement officers receive, they'll always ask before you go
24 hands-on with searching anybody, I had just essentially assumed
25 that that question had to have been asked for him to make that

1 statement.

2 Q. So, just to make it precise. No one -- you can't recall
3 today if anyone gave you that information, you just -- your
4 testimony is that you assumed that given the fact that this is a
5 standard procedure that that's what happened?

6 A. Yes, sir. I can't recall any specific -- where that was
7 specifically said to me. That's correct, Your Honor.

8 Q. Okay. All right. So, do you -- I guess I'm trying to think
9 if -- I'm trying to get it clear. Do you just not remember today
10 or at the time did you just kind of think, well, this is
11 probably what happened?

12 A. Well, sir, it was such a fluid situation. Everything had --
13 all the reports had come in that day. And with me talking to the
14 different individuals, piecing everything together and then
15 drafting the criminal complaint the next day, it just --

16 Q. I'm just trying to -- I'm not trying to criticize anybody
17 here.

18 A. Oh, no. I understand, sir.

19 Q. I'm just trying to figure out do you remember at the time you
20 executed the affidavit, do you remember at that time where you
21 got this information from? Was it -- do you remember somebody
22 told you that, but you can't remember who had told you that? Do
23 you think that, no, that's not what happened. You just assumed
24 that that's, you know, somebody may have said this to you or you
25 just kind of made it up or what?

1 A. I truly believe when I was talking to every -- all the
2 different parties involved, Your Honor, that somehow something
3 had to have been said where it clicked, that that question had to
4 have been asked and maybe I was placing the next logical step in
5 the sequence.

6 Q. Okay.

7 A. But at the time when I wrote it, I truly believed that's how
8 the circumstance went down, sir.

9 Q. Yeah. I'm not trying to -- I'm not trying to discredit you.

10 A. Right.

11 Q. I'm just trying to figure out what was going on when you
12 wrote this. So, if I've got this right, and let me restate it,
13 and if I'm wrong, correct me. At the time you had -- it was a
14 fluid situation. You had talked to a number of people. You
15 believe that somebody told you that Everett was asked if he had
16 any weapons and that he said that he had weapons. You reported
17 what he's alleged to have said. Is that much true?

18 A. Yes, sir.

19 Q. Okay. And what would you have added here to that, do you
20 think, that was just based on experience or protocol?

21 A. Experience and protocol, yes, Your Honor. Just --

22 Q. Yeah. But what part of it? Was that just supported by --
23 was that just kind of what you interpreted it to mean at the
24 time?

25 A. As far as asking that question --

1 Q. Right.

2 A. -- when they went hands-on with the search, Your Honor? Yes.

3 Based on my training and everything like that, --

4 Q. Okay.

5 A. -- that to me was just a logical step. And with him making
6 that statement, Your Honor, I figured there had to have been some
7 type of question asked for him to just go straight from keys to a
8 car on the ground to gun in the car.

9 Q. Okay. Now, let's move to the other exhibit that was referred
10 to here. And that's the -- oh, I must have screwed up. I was
11 reading from the -- wait a minute. Let me make sure I got this
12 right. Yeah. This is -- what I was covering was the affidavit
13 in support of the criminal complaint. And then I've got -- oh,
14 that's a duplicate. I've got too many papers up here is what my
15 problem is.

16 THE COURT: Has somebody got the other Exhibit #5? Let
17 me see if I can find it. Okay. #5. This is -- and what page
18 were you reading from #5 here, Marc, or --

19 MR. ERMINE: I'm sorry?

20 THE COURT: -- Jeff, which page were -- Jeff, which part
21 of this were you reading on #5?

22 MR. McCARTHER: I was reading from Exhibit #1, Your
23 Honor, which is the synopsis that Special Agent Vas put together.
24 Exhibit #5 should be Officer Patterson's report.

25 THE COURT: Which Exhibit, #1?

1 MR. McCARTHER: Yes.

2 THE COURT: Let me see what you've got.

3 MR. McCARTHER: It says "Synopsis" at the top.

4 THE COURT: Was this in from the last one?

5 MR. McCARTHER: Yes.

6 THE COURT: And what page were you reading from --

7 MR. McCARTHER: Page 3, first full paragraph, third line
8 down.

9 THE COURT: Okay. Thank you. First full paragraph,
10 third line down. Okay. And I think -- let's see if I've got
11 this right. It's the part, "FPS Officer Yadon asked Everett,"
12 right?

13 MR. McCARTHER: Yes, Your Honor.

14 THE COURT: Yeah.

15 BY THE COURT:

16 Q. So, I want to direct your attention to that. "FPS Officer
17 Yadon asked Everett if he drove to FPS Officer Yadon's location
18 and if Everett had any weapons on his person. Everett responded
19 'Yes' and further stated, 'I have a gun in the car.' FPS Officer
20 Yadon spoke to Protective Service Security Officer Foderaro and
21 confirmed that Everett was parked on 12th Street in an emergency
22 vehicle only parking space with the driver's side door open."

23 Now, where did you get that from?

24 A. I believe that was from talking to Inspector Yadon, sir, with
25 the PSO, or Protective Security Officer Foderaro's comment of

1 where he actually first learned about the -- because I believe
2 PSO Foderaro was the one that contacted FPS in the first place.

3 Q. Was Foderaro there? Did you get this from Foderaro too?

4 A. I did not speak to him directly, sir, because one of the
5 other uniformed officers was getting the supplemental statement,
6 or --

7 Q. So, you got this -- you got this from Yadon?

8 A. I believe so, sir.

9 Q. Okay.

10 A. But as far as, again, with the statement about the defendant
11 being asked if he had any weapons or contraband, essentially when
12 I wrote that, it was essentially at the same time I was starting
13 to write the criminal complaint draft.

14 Q. Right.

15 A. And those meshed. The only time I even actually knew that
16 that was in contention was when I was working the Inauguration a
17 few weeks back and AUSA McCarter had let me know that there was
18 some inconsistencies with that.

19 Q. Right.

20 A. I truly believe that that's -- that that's the situation as
21 it went down. So, with the affidavit in support of the
22 complaint, Your Honor, and that those were essentially written at
23 the same time with my same belief process.

24 Q. Okay. All right. Now, I've got some other questions and
25 this is going to -- I'm just kind of curious. You're the case

1 agent, so I -- you know, you may know answers to this and you may
2 not. And if you don't, that's fine.

3 A. Yes, Your Honor.

4 Q. Just tell me that. With regard to the keys that were -- that
5 at least one witness says fell out of the defendant's pocket at
6 the time, do you know why those aren't listed as being seized
7 from the defendant?

8 A. To be honest, Your Honor, I don't know. I don't think we
9 came across -- when I say "we," I say -- I mean FPS. I don't
10 think it was anything that we had personally collected --

11 Q. Okay.

12 A. -- as far as personal property. So, as far as the
13 whereabouts of the keys, Your Honor, I'm not 100 percent sure.

14 Q. Okay. What about -- there's a reference in some of the
15 testimony that we've had already about a video of the event being
16 gathered.

17 A. Yes, Your Honor.

18 Q. Do you know anything about that?

19 A. Yes, Your Honor. We had a Special Agent Kathy Glover, who
20 has since transferred to Denver, and a uniformed officer who
21 deals with gathering CCTV evidence. And what they did is from, I
22 believe, like about an hour before and an hour after the time
23 frame we have multiple camera angles on the rooftop of the
24 Bolling Federal Building. And I ordered them to grab all the
25 video for those time frames. It's on two DVR units, Your Honor,

1 and provide those to me.

2 THE COURT: So, do we have anything relevant to this
3 proceeding? Anybody? Have you seen them?

4 MR. ERMINE: I have.

5 MR. McCARTHER: I've also seen them, Your Honor. The
6 videos are consistent with the reports. And so, --

7 THE COURT: Okay.

8 MR. McCARTHER: -- rather than play through lengthy
9 video, I offered the testimony.

10 BY THE COURT:

11 Q. Okay. Do you know -- did you arrest him or did somebody else
12 arrest him? Now, I'm not talking about detaining him. Did you
13 arrest him or did someone --

14 A. I physically was not there whenever the defendant was
15 handcuffed.

16 Q. So, you don't know anything about that?

17 A. No. Sir, I was honestly after the fact of everything going
18 down and just trying to gather everything.

19 Q. What about the issue of the car tow? Were you involved in
20 that at all? Or do you know who towed the car?

21 A. To my best knowledge, sir, that was the Kansas City Police
22 Department since we, personally as an agency, the Federal
23 Protective Service, Your Honor, we don't have a -- I don't think
24 we have a -- I'll step back from that. We don't have a way to
25 tow, I think, if it's on a city street.

1 Q. So, if anybody had done that, it would have been the PD?

2 A. Yes, Your Honor. That would have been the Kansas City Police
3 Department.

4 MR. McCARTHER: Your Honor?

5 THE COURT: Yeah.

6 MR. McCARTHER: The United States will also be calling
7 Detective Bradley Bailey to speak to that.

8 THE COURT: Okay. Good. Thank you. All right. That's
9 all. Now, I've asked a lot of questions here. And I want to
10 give everybody an opportunity to follow-up. First, Mr.
11 McCarter, additional questions here?

12 MR. McCARTHER: One -- well, actually I have a couple
13 follow-ups.

14 REDIRECT EXAMINATION

15 BY MR. McCARTHER:

16 Q. Special Agent Vas, have you reviewed the surveillance video
17 in this case?

18 A. I have.

19 Q. And is what's depicted in that surveillance video consistent
20 with the reports of the officers who were on scene?

21 A. I believe it is.

22 MR. McCARTHER: Nothing further, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. ERMINE:

25 Q. I want to direct your attention based on some of the

1 questions the Judge asked you to Defense Exhibit #3, page 2,
2 Paragraph 6. This is the affidavit in support of the criminal
3 complaint. So, in this paragraph you filed in your sworn
4 affidavit and you wrote, quote, "A KCPD officer approached the
5 open driver's side door and discovered a pistol underneath the
6 driver's seat." Is that what you wrote?

7 A. I did.

8 Q. Okay. Is that based on your observations or based on your
9 discussions with folks who were at the scene?

10 A. I believe it was from discussions with folks at the scene.

11 Q. Okay. And then subsequent to that you describe how KCPD went
12 on to impound the vehicle and do an inventory search, correct?

13 A. Yes.

14 Q. And is that also based on your discussions with folks at the
15 scene?

16 A. Correct.

17 Q. So, your chronology of these events is then based on your
18 discussion with people from that day, correct?

19 A. Correct. I wasn't directly there, I believe, when anything
20 was towed. And just there is very little footage of the vehicle
21 being towed away or anything like that.

22 Q. Right. Okay. Do you recall that prior to the vehicle being
23 towed, there were officers from Homeland Security who brought a
24 dog essentially and did a dog sniff around the vehicle? Does
25 that sound familiar to you?

1 A. If they did, I don't recall. I wasn't there. I would say
2 it's probably something they do just around federal buildings.
3 The dogs we have are explosive trained. So, I would assume
4 that's just something they did out of precaution.

5 Q. So, then the FPS has -- all right. Let me ask this. Is that
6 unit who does that, are part of the FPS or is that some other
7 division of Homeland Security?

8 A. Again, I don't know if it was a Kansas City Police detective
9 or a K-9 dog or if it was an FPS dog. If it was an FPS dog, then
10 that is something they typically do when they're attached to us.

11 Q. Okay.

12 A. I believe we have two right now currently in Kansas City.

13 Q. But FPS then has the ability to conduct certain searches of
14 vehicles when those vehicles are on federal property. By
15 ability, I mean you have dogs on hand that can be brought in to
16 do this sort of bomb sniffing, correct?

17 A. Yes. They do routine searches.

18 MR. ERMINE: Okay. If I could have one moment, Your
19 Honor? Nothing further. Thank you.

20 THE COURT: Okay. Anything else?

21 MR. McCARTHER: Nothing, Your Honor.

22 THE COURT: All right. Thank you. You may step down.
23 Call your next witness.

24 MR. McCARTHER: The United States calls Detective
25 Bradley Bailey of the Kansas City, Police Department.

1 THE COURT: Just come up here, Detective, I'll place you
2 under oath. Guys, you can retrieve your exhibits here if, Marc,
3 you and Jeff want to do that, get them back. Thank you. Raise
4 your right hand.

5 BRADLEY BAILEY, GOVERNMENT'S WITNESS, SWORN

6 THE COURT: Take the stand over here on your left. Now,
7 Officer, when you get up there it may make a noise. It just
8 adjusts for weight, so don't get concerned about it. Go ahead.

9 DIRECT EXAMINATION

10 BY MS. PRATTEN:

11 Q. Good morning.

12 A. Good morning.

13 Q. Your name is Detective Bradley Bailey, right?

14 A. Yes, it is.

15 Q. Okay. And you've previously testified at a prior suppression
16 hearing?

17 A. I did.

18 Q. Regarding your involvement with this incident on March 10,
19 2016?

20 A. I did.

21 Q. Okay. We're going to narrow down specifically and talk about
22 your participation in a tow that went on that day.

23 A. Okay.

24 Q. Were you personally and directly the individual who ordered
25 the tow?

1 A. I believe I was, yes.

2 Q. Okay. And this tow, this was of a gray vehicle?

3 A. Yes.

4 Q. Okay. Did you have any indicators prior to ordering this tow
5 that this vehicle was associated with the defendant?

6 A. Yes, I did.

7 Q. What kind of indicators did you have?

8 A. During the previous incident, I had heard the defendant make
9 a spontaneous statement that the gray car over there was his and
10 that there was a gun under the seat.

11 Q. Okay. "Over there," when he indicated the gray car over
12 there, can you describe that "over there" looked like? Where was
13 this car?

14 A. The defendant had looked over towards 12th Street which was
15 directly in front of where we -- our location. And at that point
16 I observed a silver car or gray car parked on 12th Street facing
17 east on the south curb in a lane that was exclusively marked with
18 signs for emergency vehicles only.

19 Q. Okay. So, there is more than one sign?

20 A. Yes.

21 Q. Okay. And so indicating only cars parked there should be
22 what?

23 A. Emergency vehicles of any sort. Whether it be police
24 vehicle, ambulances, Federal Protective Service, based on the
25 location of the federal building.

1 Q. Okay. So, if a car that doesn't fit that description, such
2 as this gray car is there, then you would order a tow?

3 A. It's subject to ticket and tow, yes.

4 Q. Okay. So, even if -- you said there were indicators this
5 vehicle was associated with him. If this vehicle, even if it was
6 not associated with him, if it was like anybody's vehicle and it
7 was in that location, would you have ordered a tow?

8 A. Yes. The vehicle would have been ticketed and towed.

9 Q. Okay. And that's specifically because of the area that it
10 was in?

11 A. Yes.

12 Q. Okay. When you -- after you order a tow, can you walk us
13 through the procedures that you generally do after you order a
14 tow? Not specific to this situation, but just in general.

15 A. Generally depending on the circumstances of an incident,
16 whether it be a criminal offense, a car accident, anything of
17 that nature, our procedures are to order a tow through our Police
18 Department dispatcher who then contacts various tow companies
19 depending on -- I'm not sure how their system works. But it's a
20 designated system that will then have a tow truck respond to our
21 location. As for any specific procedures as far as whether a
22 vehicle would be ticketed and towed, if it would be towed in
23 regard to a criminal offense with a hold for processing or
24 evidence, or if it would be in relation to a car accident that
25 would depend on each specific incident.

1 Q. Okay. After you order a tow, do you generally -- do you
2 conduct an inventory?

3 A. We do.

4 Q. Okay. And how does that proceed?

5 A. Based on our department policy, we have policies and
6 procedures that designate an inventory search of the vehicle's
7 property be conducted prior to towing a vehicle to our city tow
8 lot. An exception to that would be if the vehicle is determined
9 to be a crime scene or be waiting a search warrant to have our
10 crime scene investigators process it. But any vehicle that we
11 tow to our city tow lot, our policy indicates that an inventory
12 search of the contents should be conducted. And whatever
13 contents are inside that vehicle are listed on our department
14 tow-in report.

15 Q. Okay. So, when you're actually conducting it, you open the
16 door and then -- to the vehicle and then what do you do?

17 A. Essentially we go through the entire interior of the vehicle
18 to include the passenger compartments, anywhere where a person
19 could be, check the glove box, console, trunk, any part of the
20 vehicle where there could be personal belongings or other content
21 or evidence inside the vehicle.

22 Q. Okay. And then you write down everything that you find in
23 there?

24 A. Any personal property or other items we do document on our
25 tow-in report.

1 Q. All right.

2 MS. PRATTEN: Your Honor, I'm going to go ahead and
3 previously hand him what's been marked as Government Exhibit #6.

4 THE COURT: Okay.

5 BY MS. PRATTEN:

6 Q. Do you recognize what this is?

7 A. Yes, I do.

8 Q. And what is it?

9 A. It's a Kansas City, Missouri Police Department's Procedural
10 Instruction for Towing and Protective Custody of Vehicles and Its
11 Contents.

12 Q. Okay. Can you go ahead and flip through all the pages --

13 A. Yes.

14 Q. -- just make sure everything is there, there's not a missing
15 page.

16 A. To my knowledge everything looks to be complete with no
17 missing pages.

18 Q. Okay. Are you familiar with this policy?

19 A. Yes, I am.

20 Q. Okay. And how are you familiar with it?

21 A. Each individual or person on our department is required to
22 read, understand and acknowledge new policies or updated policies
23 and procedures when they're disseminated throughout the
24 department.

25 Q. Okay.

1 MS. PRATTEN: Your Honor, I'd move to admit into
2 evidence what's been previously marked as Government Exhibit #6,
3 which is the --

4 THE COURT: Any objection?

5 MR. ERMINE: No objection.

6 THE COURT: It's in. Go ahead.

7 MS. PRATTEN: -- Kansas City Police Department Tow
8 Policy.

9 THE COURT: Officer, is this the policy that was in
10 effect on March 10th of 2016?

11 THE WITNESS: Yes, it was, Your Honor.

12 THE COURT: Go ahead.

13 BY MS. PRATTEN:

14 Q. Okay. So, you've stated you have read this policy then in
15 your employment with the Kansas City Police Department?

16 A. I have.

17 Q. Okay. More than once?

18 A. Yes, I have.

19 Q. Did you read it prior to March 10th, 2016?

20 A. Yes, I did.

21 Q. Prior to ordering the tow in this case?

22 A. Yes, I did.

23 Q. Okay. To the best of your knowledge is the tow that you
24 ordered and conducted and executed consistent with the policies
25 in this policy?

1 A. Yes.

2 Q. Consistent with the words in this policy?

3 A. Yes, it is.

4 Q. Okay. All right. Now, we talked generally about tow.

5 Specifically, can you walk us through the tow -- through the tow,
6 the inventory, the whole process that you conducted on this
7 vehicle?

8 A. Yes. Based on our observations of the vehicle being
9 illegally parked in an emergency vehicle parking only lane, and
10 on-scene investigation having determined that the defendant had
11 arrived or had been inside that vehicle prior to his arrest, we
12 ordered a tow for the vehicle and completed a parking citation
13 for the vehicle as well.

14 Q. Okay. And after that, what happened?

15 A. I can't remember if it was during or after the citation was
16 issued, but the inventory search, as I mentioned, was completed
17 on the vehicle. As we were going through the vehicle documenting
18 his property, the internal contents that were inside the vehicle,
19 we located a handgun underneath the driver's seat.

20 Q. Okay. Looking underneath the driver's seat, is this
21 consistent with a normal inventory search?

22 A. Yes, it is.

23 Q. Okay. And again, how long have you been with the Kansas City
24 Police Department?

25 A. Approximately a little over seven years.

1 Q. Okay. And is it fair to say you've conducted more than one
2 inventory prior to towing a vehicle?

3 A. Yes, it is.

4 Q. Okay. In your experience was -- I know you say that it was
5 consistent with the policy. Was this tow and inventory
6 consistent with all the other tow and inventories that you've
7 conducted?

8 A. Yes, it was.

9 Q. In form?

10 A. Yes.

11 Q. Okay. And you stated that you found a firearm. Did you
12 personally find the firearm?

13 A. I can't recall if it was me personally or my partner that
14 actually discovered the firearm. But the firearm was located
15 underneath the driver's side.

16 Q. Okay. And you saw it?

17 A. Yes, I did.

18 MS. PRATTEN: Okay. Your Honor, can I have a moment,
19 please?

20 THE COURT: Yes.

21 BY MS. PRATTEN:

22 Q. Okay. I just have a few brief questions before we're done
23 with regard to the policy -- generally the tow policy. You said
24 you inventory, you write everything down, personal property
25 that's found in the car prior to towing.

1 A. Yes.

2 Q. Do you -- would you think it's fair to say that is
3 specifically to protect the owner of the property so that there
4 is a record of it?

5 A. Yes. That's one of the reasons why we do document all the
6 vehicle's content. On our tow-in report it's to document at the
7 time of the tow what was inside the vehicle. That way in case
8 there is later any items that may be claimed to have been in the
9 vehicle when it was towed, whether it be the tow lot or released
10 to the owner, if there is items that are missing, they're able to
11 determine what was inside the vehicle at that time of the tow.

12 Q. The inventory itself isn't specifically to search and find
13 things for the purposes of anything other than recording what's
14 there for the protection of whose property it is?

15 A. Correct.

16 MS. PRATTEN: Okay. Your Honor, I don't have any
17 further questions right now.

18 THE COURT: Are we going to offer the inventory here?
19 Do we have that?

20 MS. PRATTEN: Yeah.

21 THE COURT: Do we have the actual inventory that was
22 conducted? While they're looking for that, why don't you go
23 ahead and ask -- are you done with your direct examination?

24 MS. PRATTEN: Yes, Your Honor. Thank you.

25 THE COURT: We'll cover that when we come back. But

1 have you seen the inventory yet?

2 MR. ERMINE: Yes, sir.

3 THE COURT: Okay. So, can we get an agreement that at
4 some point that'll be offered into evidence? Is that all right
5 with everybody?

6 MR. ERMINE: Yes, sir.

7 THE COURT: Good. Okay. Let's cross-examine then.

8 CROSS-EXAMINATION

9 BY MR. ERMINE:

10 Q. Detective, you testified that you're familiar with the Kansas
11 City tow policy, correct?

12 A. Yes.

13 Q. And you're familiar then with Annex A of the tow policy,
14 correct?

15 A. Yes.

16 Q. What does that annex describe?

17 A. Without looking at the policy right now, I -- given that
18 there is multiple annexes, I'd have to see which specific annex
19 it's referring to and its content.

20 Q. I'll just put it up here.

21 THE COURT: Is this from an exhibit?

22 MR. ERMINE: Yes, sir.

23 THE COURT: What exhibit are we looking at?

24 MR. ERMINE: We're looking at --

25 THE COURT: Why don't you mark that?

1 MR. ERMINE: This is --

2 THE COURT: Move it over so you can get picked up. No,
3 no. Just move the mic over, Marc.

4 MR. ERMINE: Oh.

5 THE COURT: There you go. Okay.

6 MR. ERMINE: This is Exhibit #6.

7 THE COURT: Okay. Good. Move --

8 BY MR. ERMINE:

9 Q. This is the tow policy, correct?

10 A. Yes, it is.

11 Q. And this is Annex A of the tow policy?

12 A. Yes.

13 Q. So, you're familiar then with this policy?

14 A. I am.

15 Q. So, which part of this policy were you acting under in this
16 case?

17 A. Section 2 regarding vehicles and personal property being
18 illegally parked, I believe. Let me look here. Yes. And that a
19 traffic summons had been either affixed to the vehicle or
20 presented to the owner-operator.

21 Q. I think you testified that you don't remember whether you
22 actually wrote the traffic summons in this case, or do you
23 remember?

24 A. I can't remember specifically if it was me or my partner.

25 Q. Okay. And your partner, just for the sake of the record, was

1 Detective Watt?

2 A. Yes, it was.

3 Q. The traffic summons, though, you would agree is something
4 that you fill out basically electronically?

5 A. Yes, it's an electronic citation.

6 Q. Okay. Okay. And then it's left, according to the policy,
7 either on the vehicle or given to the operator of the vehicle?

8 A. Correct.

9 Q. So, in this case do you remember where the traffic summons
10 was left?

11 A. I believe it was left with the vehicle.

12 Q. Okay. Now, you had determined in your investigation here
13 that Mr. Everett wasn't the owner of the vehicle, correct?

14 A. It was not registered to him.

15 Q. Okay. And you determined that the vehicle was actually
16 registered to someone named Tiara Gray, correct?

17 A. Yes.

18 Q. I guess you did that by searching police databases that you
19 use regularly matching up registrations with the registrant?

20 A. Running the temporary tag on the vehicle, it responded back
21 to Ms. Gray.

22 Q. Okay. Did you contact Ms. Gray?

23 A. I don't recall contacting her from the scene.

24 Q. Okay. Did you ever contact her?

25 A. Yes, I did.

1 Q. Okay. And when was that, do you remember?

2 A. After this incident had been completed.

3 Q. Okay.

4 A. I can't give you a time frame as far -- I know I had contact
5 with her the following day.

6 Q. Okay. And when you made contact with her, what was the
7 purpose of that?

8 A. It was to inform her of -- to actually check with her about
9 the vehicle, to inform her that it had been towed, and
10 subsequently to seek the whereabouts of Mr. Everett the following
11 day.

12 Q. So, you contacted her by telephone, right?

13 A. I believe so, yes.

14 Q. Did you make arrangements with her to get her some of the
15 property that was in the vehicle?

16 A. I don't remember.

17 Q. Do you remember whether there was, for example, like a
18 child's safety seat in the vehicle?

19 A. I don't remember anything that would have been in the
20 vehicle. It would have been listed on the inventory.

21 Q. Okay. Did you ever meet with her in person?

22 A. Yes, I did.

23 Q. Okay. And when you met with her, did you all discuss the
24 property that was in the vehicle?

25 A. I don't remember.

1 Q. Okay. You don't -- your testimony then is you don't remember
2 ever giving her any of the property from the vehicle?

3 A. I don't remember if I did or didn't.

4 Q. Okay. Would that be normal that you would do that for
5 somebody?

6 A. It's not uncommon.

7 Q. Okay.

8 A. That's the officer's discretion.

9 Q. Would that property that you gave to her though be listed in
10 the tow report, in the inventory?

11 A. Possibly.

12 Q. Okay. You testified that you're not certain when the
13 citation was written in this case relative to when the car was
14 actually searched, correct?

15 A. I can't give you specifics as far as whether it was being
16 written while the search was being conducted or shortly before.

17 Q. You were actually part of the search, weren't you?

18 A. I believe I was, yes.

19 Q. But you didn't find the handgun?

20 A. I don't remember if it was my partner or I.

21 Q. Okay. One of the KCMO folks found the handgun, though, that
22 you're testifying?

23 A. Yes.

24 Q. Do you know if anybody had entered the car prior to the two
25 of you searching the car?

1 A. I don't remember. I don't believe so.

2 Q. By the time you went to the car was the driver's side door
3 open?

4 A. I don't remember.

5 Q. Did you ever hear any of the FPS officers that day say that
6 they had found a handgun under the seat and point you in that
7 direction during your search?

8 A. No.

9 Q. No? Or you don't remember?

10 A. I didn't hear anyone saying that.

11 Q. Okay. I want to ask you -- I want to go back and ask you a
12 question about this tow policy. So, we've already talked about
13 Annex A, Section B(2) and you've testified that that's the
14 section that you were operating under here. I want to direct
15 your attention though to Annex B, subsection A.

16 Q. Okay. So, we're looking here at Annex B, subsection A,
17 correct?

18 A. Yes.

19 Q. And this is still Government's Exhibit #6.

20 A. Yes.

21 Q. Now, would you agree with me that this subsection seems to
22 cover essentially the same ground as the subsection that we were
23 just talking about that's in Annex A?

24 A. Generally, yes.

25 Q. So, do you know how these -- or do you have any training or

1 experience even as to how these two subsections work with each
2 other?

3 A. I think there's always a possibility depending upon the
4 incident that they could work in accordance with a different
5 subsection of this policy as well as be independent.

6 Q. Okay. This policy in Annex B essentially mandates that you
7 contact -- that you make every reasonable effort to contact the
8 owner of the vehicle, correct? I mean, it says, "Officers will
9 make every reasonable effort . . ."

10 A. Yes.

11 Q. So, then are you trained basically in a situation where a
12 vehicle is illegally parked to make every effort to contact the
13 owner prior to the tow?

14 A. Yes.

15 Q. Okay. Is that what happened here?

16 A. In this case, we were unable to locate or have any knowledge
17 of Ms. Gray, the registered owner of the vehicle, being present
18 at the scene. And based on the registration of the vehicle,
19 there was no -- there's no phone number or anything that's ever
20 attached to registration information, so we had no on-scene means
21 of contacting the owner.

22 Q. Okay. Now I want to flip back to the other section real
23 quick.

24 A. Okay.

25 Q. So, you would agree with me that this policy gives you as an

1 officer or detective out in the world some discretion about when
2 to tow vehicles, correct?

3 A. Yes.

4 Q. So, how long does a car have to be parked illegally before
5 it's towed in your experience?

6 A. Well, it depends on if the vehicle is abandoned, where it's
7 illegally parked, anything like that. It generally depends on a
8 lot of different factors.

9 Q. Okay. Now, is there anything in the policy that, based on
10 your understanding of the policy, gives you latitude to
11 essentially leave the car parked and try to contact the owner to
12 just come move the car?

13 A. I believe that's included in the discretionary remarks, yes.

14 Q. Okay. So, you would agree with me that you could have taken
15 that option in this case, correct?

16 A. In this case it was a possibility. But based on the fact
17 that the vehicle was parked within a marked emergency parking
18 only and the defendant had been operating the vehicle or had been
19 in the vehicle and was in custody at the time, our decision was
20 to tow the vehicle after ticketing.

21 Q. But you would agree with me that there is nothing in this
22 particular section of the policy that we're talking about that
23 makes any reference to whether the person who was driving the
24 vehicle was arrested or not, correct?

25 A. If you go down to, I believe it's Section 4, if we can move

1 that down, it references if the driver of any vehicle is taken
2 into custody and such vehicle would be left unattended on a
3 street or highway, that section also applied to this incident.

4 MR. ERMINE: Okay. All right. If I could have one
5 moment, Your Honor?

6 THE COURT: You bet.

7 BY MR. ERMINE:

8 Q. Do you remember searching the glove compartment on the
9 vehicle here?

10 A. I don't specifically remember.

11 Q. Do you remember finding registration information in some
12 place in the vehicle that led you to -- or gave you additional
13 information that Ms. Gray -- that the car was registered to Ms.
14 Gray?

15 A. I don't remember.

16 Q. Okay. Do you do a lot of parking enforcement in your role as
17 a detective?

18 A. Currently, no.

19 Q. Okay. So, it would be out of the ordinary then for you to
20 write traffic summons and tow vehicles, wouldn't it?

21 A. It depends on the day, it depends on the situation. In my
22 current position I have no enforcement activity. But in my
23 previous position at the time of this incident, to say it would
24 be uncommon or out of my daily duties, I would have to disagree
25 with that.

1 Q. Okay. All right. Fair enough. Thank you.

2 THE COURT: Additional questions?

3 MS. PRATTEN: Yes, Your Honor.

4 THE COURT: Uh-huh.

5 MS. PRATTEN: Okay. Your Honor, this isn't marked, but
6 I --

7 THE COURT: That's all right. We'll put a sticker on
8 it.

9 MS. PRATTEN: -- put it in --

10 THE COURT: What are we calling it?

11 MS. PRATTEN: This is a tow report as #6.

12 THE COURT: What is it called?

13 MS. PRATTEN: The tow report, which I'll mark as
14 Government's Exhibit #7.

15 THE COURT: Okay. Any problem with #7?

16 MR. ERMINE: Yes, sir.

17 THE COURT: There is a problem with #7?

18 MR. ERMINE: Oh, sorry. No objection.

19 THE COURT: Okay.

20 MR. ERMINE: No problem with that.

21 THE COURT: #7 it is. It's offered and admitted into
22 evidence. Do you need to show it to him at all? Why don't we --

23 REDIRECT EXAMINATION

24 BY MS. PRATTEN:

25 Q. I'm going to show you what's been marked as Exhibit #7. Do

1 you recognize it?

2 A. Yes, I do.

3 Q. And what is it?

4 A. That's our Kansas City, Missouri Police Department Tow-In
5 Report, Form Number 36, specifically in regard to this incident.

6 Q. Okay. So, how can you recognize it? Tell me what this is.

7 A. Based on the case number, location, date and the vehicle
8 involved.

9 Q. Okay. Now, you didn't personally fill this out though?

10 A. I did not.

11 Q. I just want that on the record. Okay. And who filled this
12 out?

13 A. My partner, Detective Watt.

14 Q. Okay. And he's the one who was working this with you?

15 A. Yes, he was.

16 MS. PRATTEN: Okay. Move to place this into evidence as
17 Exhibit #7.

18 THE COURT: It's in.

19 MS. PRATTEN: Oh, okay. My mistake, Your Honor.

20 BY MS. PRATTEN:

21 Q. And then I am going to hand you what's being marked as
22 Government's Exhibit #8. Do you recognize this?

23 A. Yes, I do.

24 Q. Just look at all the pages. Okay. And what is it?

25 A. It's the Kansas City, Missouri Police Department incident

1 report, which I completed following this incident.

2 MS. PRATTEN: Okay. Your Honor, I'd move to admit
3 what's been marked as Government's Exhibit #8.

4 THE COURT: Any problem with that?

5 MR. ERMINE: No objection.

6 THE COURT: It's in.

7 BY MS. PRATTEN:

8 Q. And now I'm going to hand you what I'm marking as
9 Government's Exhibit #9. And what is this?

10 A. This is the Kansas City, Missouri Police Department Uniform
11 Parking Citation that was issued on this date to the vehicle at
12 the location.

13 MS. PRATTEN: I'd move to admit that as Government's
14 Exhibit #9, Your Honor.

15 THE COURT: Any problem with #9?

16 MR. ERMINE: No, sir.

17 THE COURT: It's in.

18 BY MS. PRATTEN:

19 Q. Okay. And now I'm just going to hand you what was admitted
20 as Exhibit #7, and it references the tow-in report. And can you
21 look and see if there's anything inventoried on there that was
22 collected from the car?

23 A. As far as collection or recovery.

24 Q. What was recovered and collected from the car?

25 A. There's items listed as the content from within the vehicle,

1 but I don't believe that they were retrieved or recovered by us.

2 Q. Okay. Is it fair to say in the box that says "Other
3 Contents," it lists miscellaneous paper, car chargers, coat,
4 glass -- coat, glass window and baby bottles?

5 A. Yes.

6 Q. Okay. And at the bottom of the exhibit it -- is it fair to
7 say it indicates disposition of the property was those were left
8 in the vehicle?

9 A. If I can see the report?

10 Q. Yeah.

11 A. Yes, they were.

12 Q. So, there's no firearm listed on that actual paper, right?

13 A. No, there was not.

14 Q. Okay. So, I'm going to hand you your report, which was
15 Exhibit #8. And on that report, do you actually have the firearm
16 listed as recovered from the vehicle?

17 A. Yes, I do.

18 Q. In the property section?

19 A. Yes.

20 MS. PRATTEN: Okay. I have no further questions, Your
21 Honor.

22 THE COURT: Why is it that you don't put that in the
23 inventory?

24 THE WITNESS: Based on the inventory of the vehicle, if
25 it -- as it pertains to firearms or other things of evidentiary

1 value, we would then recover those and list them on a separate
2 report as I did in this incident.

3 THE COURT: You're not going to return it to the people
4 that own it if there's some question of whether or not it's
5 legal?

6 THE WITNESS: Now, if it pertains to a firearm or
7 another object or whatever, if we're unable to determine an owner
8 that's specifically with firearms within our tow policy, it
9 advises that firearms within a vehicle being towed will be
10 recovered for safekeeping.

11 THE COURT: Okay. All right. Go ahead.

12 RECROSS EXAMINATION

13 BY MR. ERMINE:

14 Q. I want to talk to you about Government's Exhibit #9. You
15 testified this is the citation and it does have your signature on
16 it, correct?

17 A. An electronic signature, yes.

18 Q. Right. So, you fill this out electronically, right?

19 A. Yes.

20 Q. Now, is any information on this generated automatically as a
21 result of it being an electronic system?

22 A. The citation number, court address, court information, and
23 any verbiage that's assigned to the specific charge code that we
24 entered in.

25 Q. Okay. Is the date and time of the incident automatically

1 generated through this ticket writing system?

2 A. Automatically, no.

3 Q. Okay. So, you have to enter that time in?

4 A. Yes.

5 Q. And in this instance, is that -- that information is here?

6 That's the date of the incident, 3/10/2016?

7 A. On or about the date or time that the vehicle was illegally
8 parked, yes.

9 Q. Okay. And then 8:33 a.m.?

10 A. Yes.

11 Q. Okay. Now, this is Government's Exhibit #7. This is the tow
12 report, correct?

13 A. Yes.

14 Q. And did you fill this out or did your partner fill this out?

15 A. My partner did.

16 Q. Okay. So, this though has information about when the tow
17 truck was ordered and when the tow truck actually arrived at the
18 scene, correct?

19 A. Yes.

20 Q. And so it says on here that the tow truck was ordered in this
21 case at 9:12 a.m., correct?

22 A. Yes.

23 Q. And then the tow truck actually arrived at 9:28 a.m.?

24 A. Yes.

25 Q. Okay. Do you know what time Mr. Everett was arrested?

1 A. I don't remember. I'd have to look at my report.

2 Q. I want to ask you one more question about Government's #9.

3 That's the ticket. Why is the section that has the registrant's
4 name not filled out here? It just says "Registered owner." Do
5 you know?

6 A. In this case the citation was issued to the vehicle for being
7 illegally parked.

8 Q. Okay. So, is that something you're trained to put -- you
9 wouldn't put Ms. Gray's name on it, you would just put
10 "Registered owner"?

11 A. Yes. That -- yes.

12 MR. ERMINE: Okay. One moment, Your Honor. Nothing
13 further.

14 THE COURT: Okay.

15 MR. ERMINE: Thank you, Detective.

16 MS. PRATTEN: Nothing further, Your Honor.

17 EXAMINATION BY THE COURT:

18 Q. Let me just follow up on a couple of issues here. Can you
19 tell me when you learned that the car was actually owned by
20 another person and how you learned that? I think you ran it
21 through the computer, but tell me when that occurred in
22 relationship to doing the search and having to deal with the
23 incident with the defendant. When exactly did that happen?

24 A. Yes. Following our contact with the defendant, after he was
25 taken into custody and the ambulance was ordered, the defendant

1 was transported to the hospital in the ambulance. At that time
2 we proceeded towards the vehicle. Prior to completion of the
3 tow-in, ordering the tow, citation, anything like that, I
4 remember we ran the license plate with our dispatcher over our
5 radio. It was the Missouri temporary tag on the vehicle, to find
6 out whether it matched the vehicle and who the registered owner
7 was.

8 Q. Okay. And so once you found that out that it was registered
9 to another person, you did the inventory. But then you contacted
10 the other person later?

11 A. Yes, later on.

12 Q. Okay. And with regard to the arrest here of the defendant,
13 did you place the defendant under arrest or did somebody else do
14 that?

15 A. I don't remember specifically who told him he was under
16 arrest.

17 Q. Do you have a -- you mentioned that there was a report that
18 you did though that would have that information.

19 A. Yes.

20 Q. And where is that report? Do we have it? Is there some
21 report that you can --

22 A. Yes.

23 Q. Okay. And I'm just --

24 MS. PRATTEN: It's right here, Your Honor.

25 THE COURT: Yeah. Sure. Do you have -- can you show

1 him what report it is we're talking about here? Make sure it's
2 the one he wants.

3 BY THE COURT:

4 Q. Tell us what the number is.

5 A. I believe it's Exhibit #8.

6 Q. Okay.

7 A. And the case number is 16-17036.

8 Q. Does it reflect in -- why don't you read it to yourself and
9 see if that refreshes your memory about when, if you did, place
10 the defendant under arrest?

11 A. My partner and I assisted the Federal Protective Officers in
12 gaining physical control of the defendant.

13 Q. Right. But I'm talking about --

14 A. -- escorting him to the ground.

15 Q. Right.

16 A. And assisted them in controlling the male while they placed
17 him in handcuffs.

18 Q. Okay. But I'm interested, did you arrest him for anything?

19 A. At that point --

20 Q. For any city violation or anything like that?

21 A. At that point based on our contact and observations, we did
22 not have any municipal charges regarding -- that we were there
23 in --

24 Q. So, you never placed him under arrest?

25 A. No. We were in an assisting capacity.

1 Q. Right.

2 A. Yes.

3 Q. Okay. All right. I got it. Just bear with me for a second,
4 please.

5 A. Yes, sir.

6 Q. When you arrived and the officers were trying to get the
7 defendant under control, were you there when that was going on
8 when he was on the ground?

9 A. We were approaching, yes.

10 Q. Okay.

11 A. And assisted them in escorting him to the ground.

12 Q. Did you hear anything exchanged between any of the officers
13 that were involved and the defendant about the car and about the
14 gun?

15 A. I did not.

16 THE COURT: Okay. Okay. Now, I've asked a fair number
17 of questions. Any additional follow-up by the United States?

18 MS. PRATTEN: No, Your Honor. Thank you.

19 THE COURT: Additional follow-up by the defense?

20 MR. ERMINE: No, sir. Thank you.

21 THE COURT: Okay. Thank you. You may step down,
22 Officer.

23 THE WITNESS: Thank you.

24 THE COURT: Additional evidence by the Government?

25 MR. McCARTHER: No, Your Honor.

1 THE COURT: May I ask the parties before -- and any
2 evidence you want to present?

3 MR. ERMINE: No, sir.

4 THE COURT: May I ask the parties if I can get a copy of
5 that video? I would like to see the video.

6 MR. McCARTHER: Yes, Your Honor.

7 THE COURT: Okay. Any problem with that?

8 MR. ERMINE: There's a lot of different videos. So,
9 maybe if you could tell us which one you want to see and figure
10 out which one shows what you want --

11 THE COURT: Tell me -- well, help me understand what
12 videos we have.

13 MR. ERMINE: There are a lot. I think there are videos
14 that kind of show the street where the car is parked. There's a
15 video that shows Mr. Everett being arrested. None of the videos
16 have audio.

17 THE COURT: I want to see that one.

18 MR. ERMINE: Okay.

19 THE COURT: I want to see that one.

20 MR. ERMINE: There is a video that shows officers
21 milling about outside the vehicle and then ultimately shows the
22 tow truck come. I think the reason why we're saying what we are
23 about the videos is that the whole time -- the videos are panning
24 back and forth. So, you get like a few seconds here and then it
25 continues to pan and so it is difficult to see. But so we

1 definitely could get the arrest video.

2 THE COURT: Can you agree on what would be relevant to
3 the issues here? I'm not interested in watching the camera span
4 back and forth, but I would be interested if there's footage that
5 would be relevant to the questions that are before me.

6 MR. McCARTHER: Your Honor, I do have a typed guide
7 which should show at what time frame on which camera which would
8 be relevant to different events that are taking place.

9 THE COURT: Can we do this? Then can you get together
10 with Marc and kind of figure out what part of this would be
11 really relevant to the issues here and then submit that? Is that
12 possible?

13 MR. McCARTHER: Yes.

14 THE COURT: Okay. You're looking at me like, you know,
15 this is an incredible burden or something.

16 MR. McCARTHER: No. I'm --

17 THE COURT: I'm just trying to figure out why you're
18 hesitant.

19 MR. McCARTHER: But the answer can't be we don't feel
20 any of it's relevant, right? Do you know what I mean?

21 THE COURT: And I just don't know that though. I mean,
22 you may not believe any of it's relevant, but I would like to see
23 it if we have -- I mean, what -- to me, what could be more -- if
24 we have actual video of the event, that's not -- that's the
25 event.

1 MR. McCARTHER: That --

2 THE COURT: And it seems like that would be important.

3 Now, you may be perfectly right that it's not going to be
4 helpful. But I wouldn't --

5 MR. McCARTHER: Your Honor, just -- and just to be
6 clear, the reason that video wasn't brought in was for a number
7 of reasons. One, the video is very choppy. The camera does pan
8 back and forth. I did not find it helpful any more -- well, I
9 found it less helpful than the direct testimony of the witnesses
10 that I presented. And as Agent Vas stated on the record, the
11 video is consistent to the testimony that you've heard. And so
12 I'll certainly get it together for you.

13 THE COURT: Why don't you -- why don't you see if you
14 can at least get it edited that you both can agree what would
15 conceivably be helpful. I'm not interested in watching a bunch
16 of scanning back and forth. But if there is something there
17 about the actual event, it might be helpful for me or it might
18 not be. I'm not -- you know it better than I do having reviewed
19 it, so. Why don't you see if you can get something and submit
20 it. And if you think -- both of you think otherwise, you know,
21 I'm not going to require anybody to do it. But at least let me
22 see what it is that we've got. Okay. So, does that then
23 conclude everything here? Is that it?

24 MR. McCARTHER: On behalf of the United States, yes,
25 Your Honor.

THE COURT: All right.

MR. ERMINE: Yes, sir.

THE COURT: Okay. You're not anticipating any more supplemental motions here?

MR. ERMINE: Not anticipating them, no, sir.

THE COURT: Okay. All right. Well, thank you both very much. We covered a fair amount of material in a relatively short amount of time. So, thank you.

(Court Adjourned at 11:00 a.m.)

INDEXWITNESSES FOR
THE PLAINTIFF:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Travis Vas	4	10	27	
Bradley Bailey	37	39	48	

EXHIBITS:

	<u>MARKED</u>	<u>ADMITTED</u>
D#4	11	12
D#5	11	13
G#6	34	35
G#7	48	48
G#8	49	50
G#9	50	50

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceeding in the
above-entitled matter.

1 /s/ Lissa C. Whittaker
2 Signature of transcriber

3 February 15, 2017
4 Date